

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-HQ-OAR-2009-0746; FRL-9131-8]

RIN 2060-AP91

**Requirements for Control Technology Determinations for
Major Sources in Accordance With Clean Air Act Sections,
Sections 112(g) and 112(j)**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: We are proposing to amend the rule governing case-by-case emission limits for major sources of hazardous air pollutants under section 112(j) of the Clean Air Act. Specifically, we are proposing revisions to the section 112(j) rule to clarify and streamline the process for establishing case-by-case emission limits in the case of the complete vacatur of a section 112(d) rule applicable to a major source category initially listed pursuant to section 112(c)(1). In addition, we are also proposing revisions that would eliminate provisions of the section 112(j) rule that have become obsolete or are redundant.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], unless a public hearing is requested by [INSERT DATE 15 DAYS AFTER

PUBLICATION IN THE FEDERAL REGISTER]. If a hearing is requested on the proposed amendments, written comments must be received by [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2009-0746, by one of the following methods:

- Federal eRulemaking Portal: www.regulations.gov:
Follow the on-line instructions for submitting comments.
- Agency Web Site: <http://www.epa.gov/oar/docket.html>.
Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web Site.
- Email: a-and-r-docket@epa.gov. Include Docket ID No. EPA-HQ-OAR-2009-0746 in the subject line of the message.
- Fax: Fax your comments to: (202) 566-9744, Docket ID No. EPA-HQ-OAR-2009-0746.

- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Docket ID No. EPA-HQ-OAR-2009-0746. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for EPA, 725 17th St., NW, Washington, DC 20503.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0746. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or

otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index,

some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at EPA Center EPA Docket Center, 1301 Constitution Ave., NW, Room 3334, Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566- 1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D205-02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541-5262; fax number: (919) 541-5600; email address: colyer.rick@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed amendments include:

Category	NAICS*	Examples of Regulated Entities
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	Code	
Polyvinyl Chloride and Copolymers Production	325211	Facilities that polymerize vinyl chloride monomer to produce polyvinyl chloride and/or copolymer products.
Brick and Structural Clay Products	327121	Brick and structural clay tile manufacturing facilities.
Brick and Structural Clay Products; Clay Ceramics	327122	Ceramic wall and floor tile manufacturing facilities and extruded tile manufacturing facilities.
Brick and Structural Clay Products	327123	Other structural clay products manufacturing facilities.
Clay Ceramics	327111	Vitreous plumbing fixtures (sanitaryware) manufacturing facilities.
Any industry or institution using a boiler or process heater.	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.

Industry		Sources in a source category "initially listed" and regulated under any other section 112(d) emission standard for hazardous air pollutants that is completely vacated by the Court of Appeals for the District of Columbia.
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*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity or operation at your facility, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A of this part (General Provisions).

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does

not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: <http://www.epa.gov/ttn/oarpg/>. The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by [INSERT DATE 15 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], we will hold a public hearing on [INSERT DATE 20 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. If you are interested in attending the public hearing, contact Ms. Joan Rogers at (919) 541-4487 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the

EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Amendments

A. What is section 112(j)?

Section 112(j) of the Clean Air Act as amended in 1990 (CAA) provides generally that major sources in a listed category or subcategory for which EPA fails to promulgate section 112(d) MACT (Maximum Achievable Control Technology) standards by deadlines established pursuant to sections 112(e) (1) and (3) of the CAA must submit permit applications beginning 18 months after such deadlines, and that federal or state permit writers must then determine on a case-by-case basis an emission limitation equivalent to the limitation that would apply if an emission standard had been issued in a timely manner under CAA section 112(d) of the Act. See CAA 112(j) (2)-(5).

States (with approved title V operating permit programs) or EPA will issue permits containing MACT emission limitations determined on a case-by-case basis to be equivalent to what would have been promulgated by EPA. Regulations implementing section 112(j) were originally promulgated by EPA in 1994 and amended several times since then; they are contained in subpart B, 40 CFR 63.50 through 63.56.

B. Applicability of Section 112(j) When a Section 112(d) Rule For Major Sources is Vacated In Its Entirety.

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the national emission standards for hazardous air pollutants (NESHAP) for the Polyvinyl Chloride and Copolymers Production ("PVC"), Brick and Structural Clay Products Manufacturing ("Brick"), Clay Ceramics Manufacturing ("Clay Ceramics"), and the Industrial, Commercial and Institutional Boilers and Process Heaters ("Boilers") source categories. (See Mossville Environmental Action Now v EPA, 370 F.3d. 1232 (D.C.Cir. 2004), Sierra Club v EPA, 479 F.3d. 875 (D.C. Cir. 2007) and NRDC V. EPA, 489 F.3d. 1250 (D.C. Cir. 2007), respectively.) The Court vacated each of these regulations in their entirety and issued the mandate effectuating the vacatur of the PVC standards on May 11, 2005, the mandate effectuating the vacatur of the Brick and Clay Ceramics standards on June 18, 2007, and the mandate effectuating the vacatur of the Boilers standards on July 30, 2007.

EPA's long-standing position is that the "hammer" requirements of CAA section 112(j) apply in the case of a complete vacatur of a section 112(d) rule for a major

source initially listed pursuant to section 112(c)(1).¹ This position is supported by Congressional intent reflected in the overall structure of the CAA as amended in 1990.

Congress amended the CAA in 1990 by naming 190 hazardous air pollutants and requiring EPA to promulgate emission standards to reduce emissions of these and any additional hazardous air pollutants subsequently identified by EPA. 42 U.S.C. § 7412(b)(1), (d). Congress first directed EPA to list categories and subcategories of major sources that emit one or more hazardous air pollutants. 42 U.S.C. § 7412(c). EPA was next required to establish technology-based MACT standards for the listed categories and subcategories of major sources. *Id.* § 7412(d), (e).

Congress further required that these standards be promulgated "as expeditiously as practicable" on a phased schedule, with standards for all source categories

¹ *See, e.g.,* Federal Title V permit for Veolia ES, Technical Services L.L.C. with a Section 112(j) limit for a gas-fired boiler to (STATEMENT OF BASIS, Air Pollution Control Title V Permit to Operate Permit No. V-IL-1716300103-08-01, EPA Docket ID No. EPA-R05-OAR-2008-0235-0285.3) and materials developed in support of EPA's request to OMB for renewal of the Section 112(j) Information Collection Request (ICR). ("Information Collection Request for Requirements for Control Technology Determinations from Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j) - Supporting Statement" EPA Docket ID No. EPA-HQ-OAR-2002-0038-0092), "Reply in Support of Motion for Voluntary Vacatur and Remand" and "Opposition to Petitioners' Cross-Motion to Establish Deadline to Govern Remand" in Natural Resources Defense Council, et. al. v EPA (No. 04-1385 and consolidated cases) and "EPA's Petition for Panel Rehearing" in Mossville Environmental Action Now and Sierra Club v. EPA, (No. 02-1282).

promulgated by November 15, 2000. 42 U.S.C. § 7412(e)(1)(E). Section 112(j) was enacted to ensure that these major sources would be subject to case-by-case MACT standards even if no national MACT standards were in place after the deadlines established pursuant to section 112(e).

In light of Congressional intent that sources in listed source categories be subject to either national or case-by-case MACT standards, EPA's view is that when a section 112(d) rule establishing MACT standards is vacated in its entirety after such deadlines, there has been, in effect, a "[f]ailure to promulgate a standard" within the meaning of section 112(j)(2).² This view is also supported by case law that establishes that to vacate means to annul or make void and is a reasonable interpretation of section 112(j). See, e.g., Action on Smoking Health v. CAB, 713 F.2d 795, 797-800 (D.C. Cir. 1983).

C. What source categories would be affected?

These amendments would immediately affect sources in any source category "initially listed" in 1992 (57 FR 31576, 15991; July 16, 1992) for which all applicable MACT standards have been vacated, namely, MACT standards for PVC, Brick, Clay Ceramics, and Boilers. In addition, the

² If only some of the MACT standards within a section 112(d) rule applicable to a source category are vacated, EPA's view is that section 112(j) is not applicable to such source category because there is "a standard" in place.

amendments would apply to sources in any source category "initially listed" in 1992 (57 FR 31576, 15991; July 16, 1992) for which a section 112(d) rule establishing MACT standards is completely vacated in the future. It is important to note that section 112(j) and EPA's section 112(j) regulations will apply only where there has been or is in the future a vacatur of a section 112(d) rule establishing MACT standards. EPA has issued section 112(d) MACT standards for all source categories "initially listed" and thus a failure to promulgate within the meaning of section 112(j) can only arise in the future if the entire MACT regulation for such a source category is completely vacated. Thus, the provisions in the current section 112(j) regulations that are premised upon schedules established for issuance of MACT standards for "initially listed" source categories are obsolete or unnecessary and are revised or eliminated in today's proposal.

III. Summary of Proposed Amendments

We are proposing these amendments to clarify and streamline the process for sources and permitting authorities to follow in establishing case-by-case emissions limitations under section 112(j) in the case of complete vacatur of a section 112(d) MACT standard. There has been confusion and uncertainty among some permitting

authorities and sources as to how section 112(j) and EPA's regulations implementing section 112(j) apply in the case of a complete vacatur of a section 112(d) rule establishing MACT standards, especially with respect to the timing of the application process. The amendments we are proposing today will clarify how the section 112(j) regulations apply in the case of such vacatur. We note that EPA's proposed revisions are limited primarily to revisions that will clarify and streamline the application process when section 112(j) is triggered by a complete vacatur. The proposed revisions will also remove obsolete or redundant regulatory language. EPA is not revising or seeking comment on any other provision of the section 112(j) regulations.

A. Clarification of Applicability of Section 112(j).

As discussed above in Section II.B., EPA's long-standing position is that section 112(j) applies in the case of the complete vacatur of a section 112(d) rule establishing MACT standards for an initially listed major source. We are proposing language changes within the rule to clarify the applicability of section 112(j) in the case of such a complete vacatur. Specifically, we are proposing to revise the definition of the affected source to identify the triggering mechanism for section 112(j) from when "the Administrator has failed to promulgate emission standards

by the section 112(j) deadline" to when "there is no section 112(d) standard in place on or after the section 112(j) deadline." This is consistent with EPA's view that when there has been a complete vacatur of a section 112(d) rule establishing MACT standards, there has been in effect a "[f]ailure to promulgate a standard" within the meaning of section 112(j).

We are also proposing minor revisions to the regulations to further clarify the applicability of section 112(j) and to reduce redundancies. For example, where the rule language refers to section 112(d) or (h) standards, as in the definition of "Equivalent Emission Limitation," we are proposing to delete the reference to 112(h) to eliminate redundancy because a 112(h) standard falls within the definition of a 112(d) standard (see section 112(d) (2) (D)).

Further, we are proposing to add a definition of "Listed Source Category or Subcategory" to clarify which source categories would be potentially subject to section 112(j) in the event that a section 112(d) rule for a major source is vacated in its entirety. This definition would specify that only those categories and subcategories on the initial 1992 source category list would be potentially affected. Section 112(j) applies to categories or

subcategories of sources that are subject to a schedule for promulgation of MACT standards pursuant to section 112(e)(1) and (3) (See section 112(j)(2)). The scheduling requirements of section 112(e)(1) and (e)(3) apply to categories and subcategories of sources "initially listed" for regulation pursuant to section 112(c)(1). Thus, source categories listed after the initial listing (such as coal- and oil-fired electric generating units) that were not initially listed pursuant to section 112(c)(1) and thus are not covered by the schedules in section 112 (e)(1) and (e)(3), are not subject to section 112(j). See 57 FR 31576, 15991 (July 16, 1992) (initial source category list) and 58 FR 63941 (Dec. 3, 1993) (schedule establishing deadlines for the promulgation of emission standards for the categories of sources initially listed pursuant to section 112(c)(1) and (3)).

B. Permit application content.

We are proposing to streamline the permit application by combining the Part 1 and Part 2 permit application. The original section 112(j) rule had a single permit application. We created the bifurcated process in 2003 (68 FR 32586; May 30, 2003) to allow a source additional time to compile the information necessary for the permitting authority to make a MACT floor determination. We find this

bifurcation to be unnecessary now that section 112(j) is only applicable to sources in source categories for which a section 112(d) rule has been or will be vacated in its entirety. As discussed below, under the circumstances surrounding complete vacatur of a section 112(d) rule, many sources will have already compiled and submitted to the permitting authority the information required by a section 112(j) application. We are proposing no other changes to the permit application content. However, we are proposing to retain the requirement that sources seeking equivalency determinations pursuant to 63.52(e)(2)(ii) submit information that would be submitted as part of a Part 1 application under the current rule, i.e., the information set out at 63.53(a)(1)-(4). Today's proposal changes that heading for section 63.53(a) from "Part 1 MACT application" to "Section 112(g) equivalency determination request."

C. Section 112(j) Permit application deadline.

We are proposing to establish the deadline for submittal of a permit application to obtain a section 112(j) limit in the case of a complete vacatur by redefining "Section 112(j) Deadline." For those source categories for which the mandate effectuating the complete vacatur of the MACT rule was issued over 18 months ago, namely the Boilers, Brick, Clay Ceramics, and PVC source

categories, we are proposing to revise 40 CFR 63.52(a)³ to require that sources in those categories submit permit applications the earlier of 90 days after promulgation of these amendments or the date by which the source's permitting authority has requested in writing a section 112(j) Part 2 application.

We have selected 90 days consistent with the timing set forth in 40 CFR 63.52(a)(2) of the current rule⁴. The above proposed approach recognizes that there may have been some uncertainty as to the application of section 112(j) after the complete vacatur of the PVC, Brick, Clay Ceramics, and Boiler MACT standards. Under the existing section 112(j) regulations, where a source subject to section 112(j) as of the section 112(j) deadline is not able to "reasonably determine" that one or more sources at the major source belong in the category or subcategory subject to section 112(j), pursuant to section 40 CFR 63.52(a)(2) of the current regulations, notification by the permitting authority initiates the 30-day period for submittal of a Part 1 application. Under such circumstances, the current rule provides that the Part 2 application is due 60 days after the date that the Part 1 application is due (40 CFR 63.52(e)(1)). EPA is proposing

³ 40 CFR 63.52(a) applies to sources subject to section 112(j) as of the section 112(j) deadline.

⁴ As explained in section III. D. of this preamble, we are deleting 63.52(a)(2) of the current rule.

to revise the regulation to provide that for sources in the PVC, Brick, Clay Ceramics and Boiler source categories subject to section 112(j) as of the section 112(j) deadline, a section 112(j) application is due the earlier of 90 days after the date of promulgation of the revisions or by the date specified by the source's permitting authority for submittal of a Part 2 permit application. In either case, sources will have had at least 90 days notice of the obligation to submit a section 112(j) application. If a section 112(d) rule establishing emission standards for a category of major sources is vacated in the future, we are proposing that permit applications be submitted within 18 months after the date of the court mandate effectuating the complete vacatur of the standards applicable to such sources covered by 40 CFR 63.52(a) (sources subject to section 112(j) as of the 112(j) deadline).

We believe that these deadlines would provide sufficient time for the source owner or operator to prepare a permit application for submittal. Sources in the PVC, Brick, Clay Ceramics and Boilers source categories that were unsure of the applicability of section 112(j) have at least 90 days notice of their obligation to complete the permit application process as contemplated by the current

regulations. This proposed rule also serves to provide notice of when applications will be due if these rule amendments are promulgated as proposed. Further, many sources will have had much more notice by virtue of communications with permitting authorities. If a section 112(d) rule establishing emission standards for a major source category is vacated in the future, a source would have up to 18 months after the date of the mandate effectuating the vacatur to prepare its permit application. Eighteen months is consistent with the timing for submittal of section 112(j) permit applications provided for in section 112(j)(2) of the CAA.

In both cases sources and permitting authorities should already have most, if not all, of the information required to be included in the application for a section 112(j) case-by-case limit. Sources that were subject to the vacated PVC, Brick, Clay Ceramics and Boilers standards should have previously compiled and provided information to the permitting authority in the process of obtaining their title V permit conditions for meeting the standards before such standards were vacated. Pulling the existing information together in a permit application for case-by-case MACT and reviewing it prior to submittal to the permitting authority should add little additional burden.

This is also likely to be the case in the event of any future vacatur, especially given the 18 month period for submittal of applications.

EPA seeks comments on the 90 day period and whether a longer or shorter time period for submission of applications is appropriate for the PVC, Brick, Clay Ceramics and Boiler source categories. We also are seeking comments on our proposal to establish an earlier deadline when a permitting authority has notified a source in the PVC, Brick, Clay Ceramics and Boiler source categories that it is obligated to submit a Part 2 application on a date that falls before 90 days after promulgation of the final rule. We further solicit comment on whether the deadline for applications should be 90 days after promulgation of the final rule in every case for the PVC, Brick, Clay Ceramics and Boiler source categories.

D. Elimination of current provisions relating to questions of applicability in §63.52(a)(2), (d)(1), and (e)(2).

The current rule provides for the owner or operator of a source to request an applicability determination from a permitting authority in the event that they are unsure whether or not the source is in a covered category or subcategory.

We are proposing to eliminate applicability determination requests. The provisions governing applicability determinations have become obsolete because they are premised upon and tied to dates and time periods in the section 112(j) regulations that have expired (See §63.52(e)(2)(i)). Further, we believe requests for applicability determinations are no longer necessary. With the exception of some sources that were subject to the vacated Boilers MACT, sources should know whether or not they are within a source category for a vacated rule because the definition of source in the vacated rule should provide sufficient guidance as to applicability. Some portion of boilers that were subject to the vacated boiler MACT rule, however, may be designated solid waste incineration units if they combust solid waste, as that term is defined in section 129(g). The Agency is in the process of defining the term "solid waste" under Subtitle D of the Resource Conservation and Recovery Act (RCRA). We anticipate that there will be further clarification of that issue by the time sources have to submit section 112(j) permit applications in light of EPA's intent to propose a rule defining the term "solid waste" under Subtitle D of RCRA by April 2010.

Sources are free to consult with permitting

authorities to resolve applicability issues before submitting a section 112(j) permit application or can submit a section 112(j) application as a protective measure and work with the permitting authority during the completeness determination phase to resolve applicability issues.

For the same reason, we are eliminating section 63.52(a)(2) of the current rule. As explained above, section 63.52(a)(2) of the current rule provides that, when a source is not able to "reasonably determine" that one or more sources at the major source belong in the category or subcategory subject to section 112(j), notification by the permitting authority initiates the 30-day period for submittal of a Part 1 application. For the reasons explained above, we believe that there should not be uncertainty as to the obligation to submit a section 112(j) permit application. As noted above, if there is uncertainty, the source can consult with the permitting authority to resolve such issues before submittal of a section 112(j) application or submit a section 112(j) application as a protective measure and work with the permitting authority during the completeness determination phase to resolve applicability issues.

E. Other Minor Edits

We have made minor edits and corrections to the definition of "Available Information." One correction identifies "8" information sources instead of the erroneous "5" in the last sentence prior to the list. The second correction is to replace the term "Part 2 MACT" application to "Permit" application to conform with the streamlining discussed in section III.B. Finally, in information source(5), we have revised language from "Aerometric Information Retrieval System (AIRS)" which no longer exists, by providing an example EPA database, the "Air Facility Subsystem."

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, et seq. The

Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1648.07.

The permit application requirements in the proposed rule are required in subpart B of part 63. All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B. The proposed information collection requirements consist of a title V permit application or revision, or a request for a section 112(g) equivalency determination.

We estimate that these amendments would affect about 19 PVC sources, 122 Brick and Structural Clay sources, 8 Clay Ceramics sources, and 15,500 individual Boilers.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 83,670 labor hours per year at a cost of \$6.59 million for the estimated total number of sources. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA-HQ-OAR-2009-0746.

Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], a comment to OMB is best assured of having its full effect if OMB receives it by [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure

Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) a small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500, 750, or 1,000 employees depending on the category); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These proposed amendments merely clarify the application process for obtaining case-by-case MACT limits in the case of complete vacatur of a 112(d) MACT rule. The requirements of the

current rule and the amendments proposed today implement existing CAA requirements and do not impose additional requirements not already required by the CAA. Therefore, this rule does not impose any new costs. Section 112(j) of the Clean Air Act requires sources to submit applications for case-by-case limits and requires permitting authorities to develop case-by-case limits (See 112(j)(3)-(5)). These proposed amendments do not establish any new section 112 standards. Case-by-case standards are developed by the permitting authority, which in most cases is a State. In addition, as is explained above, these proposed amendments narrow the applicability of the current section 112(j) regulations to major sources in source categories for which a MACT standard was promulgated and subsequently vacated in its entirety. Further, because this rule only applies to source categories for which a MACT standard was promulgated and subsequently vacated, permitting authorities and sources should already have a significant amount of the information required in the permit application for a case-by-case MACT limit. Sources that were subject to the vacated PVC, Brick, Clay Ceramics and Boilers standards should have previously compiled and provided information to the permitting authority in the process of obtaining their title V permit conditions for meeting the standards before

such standards were vacated. Pulling the existing information together in a permit application for case-by-case MACT and reviewing it prior to submittal to the permitting authority should add little additional burden. This is also likely to be the case in the event of any future vacatures. Sources are allowed to reference previously submitted information. Additional effort could include pulling the information together, reviewing the information, and submitting the application. EPA does not expect this additional effort to be significant. In addition, sources can recommend emission limitations and other requirements, but the proposed amendments do not require this. Finally, this certification is consistent with EPA's certification that the current 112(j) would not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, and tribal governments or the private sector. This action

imposes no enforceable duty on any State, local, tribal governments or the private sector.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments not otherwise required by the CAA. The proposed amendments contain no requirements that apply to such governments, and impose no obligations upon them.

E. Executive Order 13132: Federalism

These proposed amendments do not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action implements existing CAA requirements on owners and operators of specified major sources and does not impose additional requirements on State and local governments not specified in the CAA. Thus, Executive Order 13132 does not apply to these proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local government, EPA specifically solicits

comments on the proposed amendments from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The action implements existing CAA requirements on owners and operators of specified major sources and does not impose additional requirements on tribal governments not already required by the CAA. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Order has the potential

to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that these proposed amendments are not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through

OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or

environmental effects on any population, including any minority or low-income population. The proposed amendments require permitting authorities to develop case-by-case emission limits for all sources in each source category for which standards have been vacated.

**Requirements for Control Technology Determinations for
Major Sources in Accordance With Clean Air Act Sections,
Sections 112(g) and 112(j)**

Page 36 of 55

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous
substances, Reporting and recordkeeping requirements.

Dated: March 24, 2010.

Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63--[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart B--[AMENDED]

2. Section 63.50 is amended by:

- a. Revising the first sentence of paragraph (a)(2)(i);
- b. Revising paragraph (c); and
- c. Revising the first sentence of paragraph (d) to read as follows:

§63.50 Applicability.

(a) * * *

(2) * * *

(i) The owner or operator of affected sources within a listed source category or subcategory under this part that are located at a major source that is subject to an approved title V permit program and for which there is no section 112(d) emission standard in place on or after the section 112(j) deadline. * * *

* * * * *

(c) The procedures in §§63.50 through 63.56 apply for each affected source only after its section 112(j) deadline has passed and there is no generally applicable Federal standard governing that source under section 112(d) of the Act. If a generally applicable Federal standard governing that source is in place, the owner or operator of the affected source and the permitting authority are not required to take further action to develop an equivalent emission limitation under section 112(j) of the Act.

(d) Any final equivalent emission limitation for an affected source which is issued by the permitting authority pursuant to §§63.50 through 63.56 prior to promulgation of a generally applicable Federal standard governing that source under section 112(d) of the Act shall be deemed an applicable Federal requirement adopted pursuant to section 112(j) of the Act. * * *

3. Section 63.51 is amended by:

- a. Revising the definition of Affected source;
- b. Revising the definition of Available information;
- c. Revising the definition of Equivalent emission limitation;
- d. Revising the definition of section 112(j) deadline; and
- e. Adding in alphabetical order a definition for Listed source category or subcategory to read as follows:

§63.51 Definitions.

* * * * *

Affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is in a listed source category or subcategory for which there is no section 112(d) emission standard on or after the section 112(j) deadline, and that is addressed by an applicable MACT emission limitation established pursuant to this subpart.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options under this subpart, any information that is available as of the date on which the first permit application under this subpart is filed for a source in the relevant source category or subcategory in the State or jurisdiction; and, pursuant to the requirements of this subpart, is additional relevant information that can be expeditiously provided by the Administrator, is submitted by the applicant or others prior to or during the public comment period on the section 112(j) equivalent emission limitation for that source, or information contained in any of the information sources in paragraphs (1) through (8) of this definition.

- (1) A relevant proposed regulation, including all supporting information;
- (2) Relevant background information documents for a draft or proposed regulation;
- (3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination;
- (4) Relevant data and information available from the Clean Air Technology Center developed pursuant to section 112(1)(3) of the Act;
- (5) Relevant data and information contained in EPA databases such as the Air Facility Subsystem;
- (6) Any additional information that can be expeditiously provided by the Administrator;
- (7) Any information provided by applicants in an application for a permit, permit modification, administrative amendment, or Notice of MACT Approval pursuant to the requirements of this subpart; and
- (8) Any additional relevant information provided by the applicant.

* * * * *

Equivalent emission limitation means an emission limitation, established under section 112(j) of the Act,

which is equivalent to the MACT standard that EPA would have promulgated under section 112(d) of the Act.

Listed source category or subcategory means a source category or subcategory initially listed pursuant to section 112(c)(1) at 57 FR 31576, 15991 (July 16, 1992).

* * * * *

Section 112(j) deadline means:

(1) for a source in the Polyvinyl Chloride and Copolymers Production, Brick and Structural Clay Products Manufacturing, Clay Ceramics Manufacturing, or the Industrial, Commercial and Institutional Boilers and Process Heaters source category, the earlier of [THE DATE 90 DAYS AFTER THE PROMULGATION DATE IN THE FEDERAL REGISTER] or the date by which the source's permitting authority has requested in writing a section 112(j) permit application containing the information set out in section 63.53(b); or

(2) for any other major source in a listed source category or subcategory, 18 months after the date of a court mandate effectuating the complete vacatur of a section 112(d) rule applicable to such source.

* * * * *

4. Section 63.52 is amended by:

- a. Revising the first sentence of paragraph (a) introductory text;
 - b. Revising paragraph (a) (1);
 - c. Removing paragraph (a) (2) and redesignating paragraph (a) (3) as (a) (2);
 - d. Revising newly designated paragraph (a) (2) introductory text;
 - e. Revising the first sentence of newly designated paragraph (a) (2) (i);
 - f. Revising the second sentence of newly designated paragraph (a) (2) (ii);
 - g. Revising the first sentence of paragraph (b) (1);
 - h. Revising the third sentence of paragraph (b) (2);
 - i. Revising the first sentence of paragraph (b) (3);
 - j. Revising the first sentence of paragraph (b) (4);
 - k. Revising paragraph (c) introductory text;
 - l. Revising the first sentence of paragraph (c) (2);
 - m. Revising paragraph (d);
 - n. Revising paragraphs (e) (1), (e) (2), (e) (3), and (e) (4);
- and
- o. Revising paragraph (g) to read as follows:

§63.52 Approval process for new and existing affected sources.

(a) Sources subject to section 112(j) as of the section 112(j) deadline. The requirements of paragraph (a)(1) of this section apply to major sources that include, as of the section 112(j) deadline, one or more sources in a category or subcategory for which there is no section 112(d) emission standard in place on or after the section 112(j) deadline. * * *

(1) The owner or operator must submit an application for a title V permit or for a revision to an existing title V permit or a pending title V permit meeting the requirements of §63.53(b) by the section 112(j) deadline unless the owner or operator has submitted a request for 112(g) equivalency determination under paragraph (a)(2) of this section.

(2) The requirements in paragraphs (a)(2)(i) through (ii) of this section apply when the owner or operator has obtained a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g) or has submitted a title V permit application for a revision that incorporates a case-by-case MACT determination under section 112(g), but has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j).

(i) When the owner or operator has a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), the owner or operator must submit a request meeting the requirements of §63.53(a) for a title V permit revision within 30 days of the section 112(j) deadline. * * *

(ii) * * * Within 30 days of issuance of that title V permit, the owner or operator must submit a request meeting the requirements of §63.53(a) for an equivalency determination. * * *

(b) * * *

(1) When one or more sources in a category or subcategory subject to the requirements of this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke section 112(g) requirements, the owner or operator must submit an application meeting the requirements of §63.53(b) within 30 days of startup of the source. * * *

(2) * * * Within 30 days of issuance of that title V permit, the owner or operator must submit a request meeting the requirements of §63.53(a) for an equivalency determination. * * *

(3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation), increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this subpart, must submit an application meeting the requirements of §63.53(b) for a title V permit or for an application for a title V permit revision within 30 days after the date that such source becomes a major source. * *

*

(4) On or after April 5, 2002, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the Act that results in an area source becoming a major source that is subject to this subpart, then the owner or operator of such a major source must submit an application meeting the requirements of §63.53(b) for a title V permit or for a change to an existing title V permit or pending title V permit on or before the date 6 months after the date that such source becomes a major source. * * *

(c) Sources that have a title V permit addressing section 112(j) requirements. The requirements of paragraphs (c)(1) and (2) of this section apply to major sources within a listed source category or subcategory for

which there is no section 112(d) emission standard in place on or after the section 112(j) deadline, and the owner or operator has a permit meeting the section 112(j) requirements, and where changes occur at the major source to equipment, activities, or both, subsequent to the section 112(j) deadline.

* * * * *

(2) If the title V permit does not contain the appropriate requirements that address the events that occur under paragraph (c) of this section subsequent to the section 112(j) deadline, then the owner or operator must submit an application for a revision to the existing title V permit that meets the requirements of §63.53(b). * * *

(d) Requests for notice of MACT approval. In addition to meeting the requirements of paragraphs (a), (b), and (c) of this section, the owner or operator of a new affected source may submit an application for a Notice of MACT Approval before construction, pursuant to §63.54.

(e) * * * (1) Permit applications must be reviewed by the permitting authority according to procedures established in §63.55. The resulting MACT determination must be incorporated into the source's title V permit according to procedures established under title V, and any

other regulations approved under title V in the jurisdiction in which the affected source is located.

(2) As specified in paragraphs (a) and (b) of this section, an owner or operator who has submitted a request meeting the requirements of §63.53(a) may request a determination by the permitting authority of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under section 112(g) that apply to one or more sources at a major source in a relevant category or subcategory are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. Each request for an equivalency determination under this paragraph (e)(2) will be construed in the alternative as a complete application for an equivalent emission limitation under section 112(j). The process for determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j) must include the opportunity for full public, EPA, and affected State review prior to a final determination. If the permitting authority determines that the emission limitations in the

prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit, any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the permitting authority must make a new MACT determination and adopt a title V permit incorporating an appropriate equivalent emission limitation under section 112(j). Such a determination constitutes final action for purposes of judicial review under 40 CFR

70.4(b) (3) (x) and corresponding State title V program provisions.

(3) Within 60 days of submittal of the permit application, the permitting authority must notify the owner or operator in writing whether the application is complete or incomplete. The permit application shall be deemed complete on the date it was submitted unless the permitting authority notifies the owner or operator in writing within 60 days of the submittal that the permit application is incomplete. A permit application is complete if it is sufficient to begin processing the application for a title V permit addressing section 112(j) requirements. In the event that the permitting authority disapproves a permit application or determines that the application is incomplete, the owner or operator must revise and resubmit the application to meet the objections of the permitting authority. The permitting authority must specify a reasonable period in which the owner or operator is required to remedy the deficiencies in the disapproved or incomplete application. This period may not exceed 6 months from the date the owner or operator is first notified that the application has been disapproved or is incomplete.

(4) Following submittal of a permit application, the permitting authority may request additional information from the owner or operator. The owner or operator must respond to such requests in a timely manner.

* * * * *

(g) Permit issuance dates. The permitting authority must issue a title V permit meeting section 112(j) requirements within 18 months after submittal of the complete permit application.

* * * * *

5. Section 63.53 is amended by:

- a. Revising the section heading;
- b. Revising paragraph (a) introductory text; and
- c. Revising paragraphs (b) introductory text, (b) (1), (b) (2), and (b) (3) introductory text.

§63.53 Section 112(g) equivalency determination requests and application content for case-by-case MACT determinations.

(a) Section 112(g) equivalency determination request.

A section 112(g) equivalency determination request must contain the information in paragraphs (a) (1) through (4) of this section.

* * * * *

(b) Permit application. (1) In compiling a permit application, the owner or operator may cross-reference specific information in any prior submission by the owner or operator to the permitting authority, but in cross-referencing such information the owner or operator may not presume favorable action on any prior application or request which is still pending. In compiling a permit application, the owner or operator may also cross-reference any part of a standard proposed by the Administrator pursuant to section 112(d) of the Act for any category or subcategory which includes sources to which the permit application applies.

(2) The permit application for a MACT determination must contain the information in paragraphs (b) (2) (i) through (b) (2) (vi) of this section.

(i) The information required by paragraph (a) of this section if a request for 112(g) equivalency was not previously submitted.

(ii) For a new affected source, the anticipated date of startup of operation.

(iii) Each emission point or group of emission points at the affected source which is part of a category or subcategory for which a permit application is required, and each of the hazardous air pollutants emitted at those

emission points. When the Administrator has proposed a standard pursuant to section 112(d) of the Act for a category or subcategory, such information may be limited to those emission points and hazardous air pollutants which would be subject to control under the proposed standard.

(iv) Any existing Federal, State, or local limitations or requirements governing emissions of hazardous air pollutants from those emission points which are part of a category or subcategory for which a permit application is required.

(v) For each identified emission point or group of affected emission points, an identification of control technology in place.

(vi) Any additional emission data or other information specifically requested by the permitting authority.

(3) The permit application for a MACT determination may, but is not required to, contain the following information:

* * * * *

§63.54-- [Amended]

6. Section 63.54 is amended by removing the first sentence of the introductory text of the section.

7. Section 63.55 is amended by revising paragraphs (a) introductory text and (b) to read as follows:

§63.55 Maximum achievable control technology (MACT) determinations for affected sources subject to case-by-case determination of equivalent emission limitations.

(a) Requirements for permitting authorities. The permitting authority must determine whether the permit application is complete or an application for a Notice of MACT Approval is approvable. In either case, when the application is complete or approvable, the permitting authority must establish hazardous air pollutant emissions limitations equivalent to the limitations that would apply if an emission standard had been issued in a timely manner under section 112(d) of the Act. The permitting authority must establish these emissions limitations consistent with the following requirements and principles:

* * * * *

(b) Reporting to EPA. The owner or operator must submit additional copies of its application for a title V permit, permit revision, or Notice of MACT Approval, whichever is applicable, to the EPA at the same time the material is submitted to the permitting authority.

8. Section 63.56 is amended by revising the first sentence of paragraph (b), and paragraphs (c)(1) and (2) to read as follows:

§63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.

* * * * *

(b) If the Administrator promulgates a relevant emission standard under section 112(d) of the Act that is applicable to a source after the date a permit is issued pursuant to §63.52 or §63.54, the permitting authority must incorporate requirements of that standard in the title V permit upon its next renewal. * * *

(c) * * *

(1) If the Administrator promulgates an emission standard under section 112(d) that is applicable to an affected source after the date a permit application under this paragraph is approved under §63.52 or §63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the permitting authority determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standard pursuant to §63.1(e).

(2) If the Administrator promulgates an emission standard under section 112(d) of the Act that is applicable to an affected source after the date a permit application

is approved under §63.52 or §63.54, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior case-by-case MACT determination, the permitting authority is not required to incorporate any less stringent emission limitation of the promulgated standard in the title V permit and may in its discretion consider any more stringent provisions of the MACT determination to be applicable legal requirements when issuing or revising such a title V permit.

9. Tables to Subpart B of part 63 are revised by removing Tables 1 and 2.